

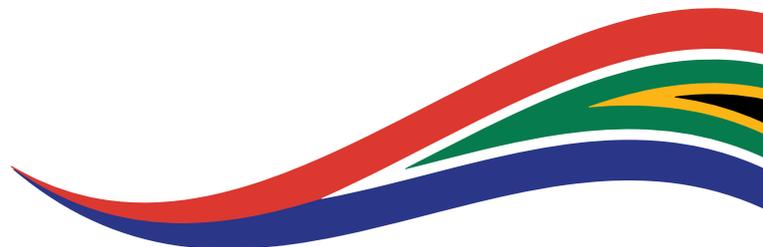


OFFICE OF THE CHIEF JUSTICE  
REPUBLIC OF SOUTH AFRICA

# JUDICIAL SERVICE COMMISSION

ANNUAL REPORT

2022/23





## DEPARTMENT'S GENERAL INFORMATION

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The Honourable Speaker of the National Assembly, Ms Nosiviwe Mapisa-Nqakula, MP, and the Honourable Chairperson of the National Council of Provinces, Mr Amos Masondo, MP.

In accordance with Section 6 of the Judicial Service Commission Act, 1994, as amended (JSC Act), I am pleased to present to you the Report of the Judicial Service Commission (JSC) on its activities during the financial year ending 31 March 2023. This Report was prepared pursuant to section 6(1) and (2) of the JSC Act, which requires the Commission to submit, within 6 months after the end of every financial year, a written report to Parliament for tabling.

The report is required to include information relating to the activities of the Commission during the year in question. This includes matters that the Judicial Conduct Committee (JCC) dealt with, all matters relating to the Register of Judges' Registrable Interests as reported by the Registrar of Judges' Registrable Interests and all matters considered by the Commission emanating from the JCC and Judicial Conduct Tribunals.

A handwritten signature in black ink, appearing to read 'R M M Zondo', written over a horizontal line.

**R M M ZONDO**

CHIEF JUSTICE OF THE REPUBLIC OF SOUTH AFRICA  
CHAIRPERSON OF THE JUDICIAL SERVICE COMMISSION  
DATE: 29 SEPTEMBER 2023



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NO PARKING  
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# TABLE OF CONTENTS

FOREWORD BY CHIEF JUSTICE	5
1. FUNCTIONS AND LEGAL MANDATES OF THE COMMISSION	7
2. COMPOSITION OF THE COMMISSION	7
2.1 COMMITTEES OF THE COMMISSION	9
2.2 SPOKESPERSONS FOR THE COMMISSION	10
2.3 SECRETARIAT OF THE COMMISSION	10
3. REPORTS ON ACTIVITIES OF THE COMMISSION	11
3.1 MEETINGS OF THE COMMISSION	11
3.2 APPOINTMENT OF JUDGES	13
3.3 JUDGES APPOINTED DURING THE PERIOD 01 APRIL 2022 - 31 MARCH 2023	13
3.4 APPOINTMENT OF THE NATIONAL WATER TRIBUNAL CHAIRPERSON	23
4. REPORT ON THE ACTIVITIES OF THE JUDICIAL CONDUCT COMMITTEE	24
4.1 COMPOSITION OF THE JUDICIAL CONDUCT COMMITTEE	24
4.2 MEETINGS OF THE JUDICIAL CONDUCT COMMITTEE	25
4.3 REPORT ON JUDICIAL COMPLAINTS	25
4.4 JUDICIAL CONDUCT TRIBUNALS	29
5. REPORT ON THE REGISTER OF JUDGES' REGISTRABLE INTERESTS	30
6. REPORT ON OTHER MATTERS	31
6.1 LITIGATION AGAINST THE COMMISSION	31
6.2 BUDGET OF THE COMMISSION	40
7. CONCLUSION	41



## FOREWORD BY CHIEF JUSTICE



**R M M ZONDO**

CHIEF JUSTICE OF THE REPUBLIC OF SOUTH AFRICA

This report relates to the financial year from 1 April 2022 to 31 March 2023. During the period under review, the Judicial Service Commission (JSC) continued to make strides in the transformation of the Judiciary in terms of section 174(2) of the Constitution. From a total of thirty-three (33) vacancies in the Superior Courts, the Commission advised the President of the Republic of South Africa to appoint twenty-five (25) candidates. The President appointed 24 Judges. The one candidate that the President did not appoint was one that the Commission had advised the President to appoint as the Judge President of the Limpopo Division of the High Court. The President's decision not to appoint him was due to the fact that court proceedings had been instituted challenging the validity of the Commission's advice to the President that the candidate be appointed. Of the 24 new appointments made, 50% were females and 50% males. Therefore, at the end of the reporting period, the Judiciary comprised a total of 248 Judges in all Superior Courts, of which 48% were African, 12% Coloured, 9% Indian and 30% White. Noteworthy, is that 113 (46%) were females.

Following a special sitting of the Commission on 20 June 2022 to interview a candidate nominated by the President for the position of Deputy Chief Justice, the President appointed Justice M M L Maya to the position of the Deputy Chief Justice of the Republic of South Africa, with effect from 01 September 2022. Deputy Chief Justice Maya is the first woman in the history of South Africa to hold the position of Deputy President of Supreme Court of Appeal (SCA), President of the SCA and Deputy Chief Justice of the Republic.

Despite the above milestone, the Commission acknowledges that more still needs to be done to fulfil the constitutional imperative of the transformation of the Judiciary.

The Commission is also tasked with dealing with complaints against Judges. The complaint processes are, however, not immune to legal challenges, which impact the speed with which the complaints are finalised. Sometimes there are complaints that the Commission delays unduly in finalising disciplinary processes against Judges. While this concern is legitimate, it needs to be pointed out that the Judicial Conduct Committee, which decides most of the complaints against Judges, is made up of mainly Judges in active service. Those are Judges who deal with complaints against Judges in addition to their normal workload of cases which they do in their respective courts.

That contributes to the delay in the finalisation of complaints. Furthermore, part of the delay in the finalisation of complaints is due to litigation that sometimes occurs where decisions of the JCC or of Tribunals established to deal with some of the complaints are challenged in courts.

During the period under review, the Commission had an opportunity to welcome new Commissioners, namely, Adv K Pillay SC, designated in terms of section 178(1)(e) of the Constitution; Prof C Marumoagae, designated in terms of section 178(1)(g); as well as Adv M S Baloyi SC and Adv T Ngcukaitobi SC, both designated in terms of section 178(1)(j). The Commission bade farewell to Adv D C Mpofu SC, Prof E Schlemmer, Adv T G Madonsela SC and Ms D L J Tshepe. The Commission expresses its gratitude to these former Commissioners for their contribution to the work of the Commission.

I also convey my gratitude to my fellow Commissioners and the Secretariat for their dedication and diligence in ensuring that the Commission continued to carry out its mandate effectively during the financial year under review.

I, therefore, have pleasure in presenting this Annual Report to Parliament on the activities of the Commission for the 2022/23 Financial Year.



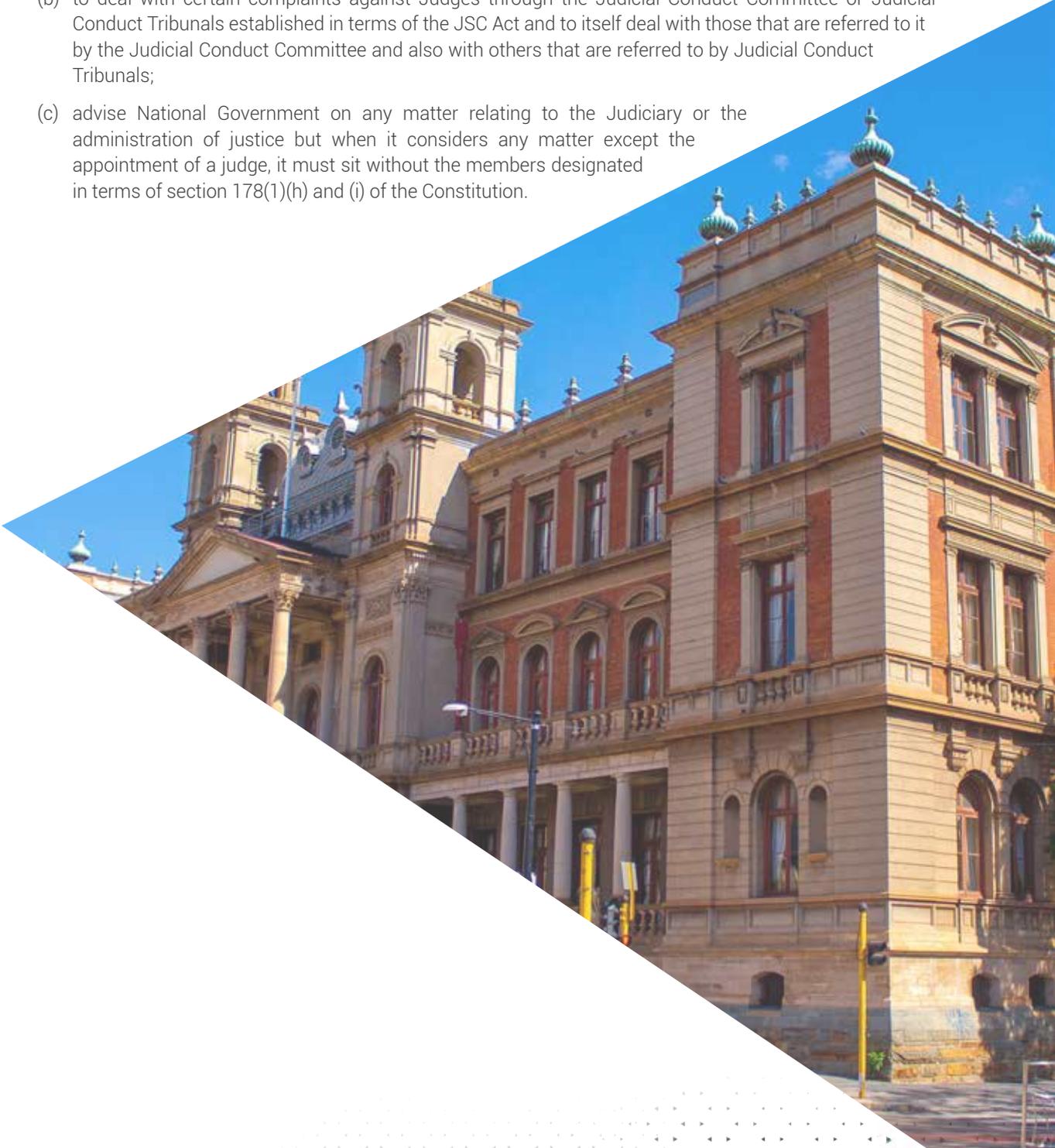
**R M M ZONDO**

CHIEF JUSTICE OF THE REPUBLIC OF SOUTH AFRICA  
CHAIRPERSON OF THE JUDICIAL SERVICE COMMISSION  
DATE: 29 SEPTEMBER 2023

# 1. FUNCTIONS AND LEGAL MANDATES OF THE COMMISSION

The Commission is a constitutional body established in terms of section 178 of the Constitution of the Republic of South Africa, 1996. The primary functions of the Commission are to:

- (a) interview candidates for appointment as Judges and advise the President as to which candidates to appoint as Judges or, in the case of Judges of the Constitutional Court, to provide the President with a list of candidates from whom he will make appointments;
- (b) to deal with certain complaints against Judges through the Judicial Conduct Committee or Judicial Conduct Tribunals established in terms of the JSC Act and to itself deal with those that are referred to it by the Judicial Conduct Committee and also with others that are referred to by Judicial Conduct Tribunals;
- (c) advise National Government on any matter relating to the Judiciary or the administration of justice but when it considers any matter except the appointment of a judge, it must sit without the members designated in terms of section 178(1)(h) and (i) of the Constitution.



## 2. COMPOSITION OF THE COMMISSION

The Commission is made up of 23 members. It consists of:

**Table 1:**

Section of the Constitution under which designated	Name of Commissioner
Section 178(1)(a) of the Constitution, the Chief Justice, who presides at meetings of the Commission	Chief Justice R M M Zondo
Section 178(1)(b) of the Constitution, the President of the Supreme Court of Appeal	Justice X M Petse as Acting President of the Supreme Court of Appeal
Section 178(1)(c) of the Constitution, one Judge President designated by the Judges President	Justice D Mlambo
Section 178(1)(d) of the Constitution, the Cabinet member responsible for the administration of justice, or an alternate designated by that Cabinet member	Mr R O Lamola in his capacity as Minister of Justice and Correctional Services
Section 178(1)(e) of the Constitution, two practising advocates nominated from within the advocates' profession to represent the profession as a whole, and appointed by the President	Adv K Pillay SC Adv J Cane SC
Section 178(1)(f) of the Constitution, two practising attorneys nominated from within the attorneys' profession to represent the profession as a whole, and appointed by the President	Mr M Notyesi Mr E Barnard
Section 178(1)(g) of the Constitution, one teacher of law designated by teachers of law at South African universities	Prof C Marumoogae
Section 178(1)(h) of the Constitution, six persons designated by the National Assembly from among its members, at least three of whom must be members of the opposition parties represented in the Assembly	Ms N Mapisa-Nqakula Ms G Breytenbach Mr G M Magwanishe Mr J S Malema Mr N Singh Mr V C Xaba
Section 178(1)(i) of the Constitution, four permanent delegates to the National Council of Provinces designated together by the Council with a supporting vote of at least six provinces	Ms S E Lucas Mr T S C Dodovu Mr K E Mmoiemang Mr A J Nyambi
Section 178(1)(j) of the Constitution, four persons designated by the President as head of the National Executive, after consulting the leaders of all the parties in the National Assembly	Adv M S Baloyi SC Ms H K Matolo-Dlepu Adv T Ngcukaitobi SC Ms N Shabangu-Mndawe

### 2.1 COMMITTEES OF THE COMMISSION

The Commission has, in accordance with section 178(6) of the Constitution, established- the following Committees to enable it to efficiently discharge its constitutional and statutory mandate:

#### 2.1.1 Screening Committee

The Screening Committee is responsible for compiling a shortlist of candidates to be interviewed by the Commission at its sittings. It is composed of the following members of the Commission:

- (i) Acting President X M Petse (Convenor of the Committee);
- (ii) Adv K Pillay SC;
- (iii) Ms H Matolo-Dlepu;
- (iv) Adv M S Baloyi SC;

- (v) Mr M Notyesi;
- (vi) Mr A J Nyambi; and
- (vii) Prof E Schlemmer.

### 2.1.2 Litigation Committee

The Litigation Committee is responsible for ensuring that all litigation pursued by and against the Commission is handled properly. Its members are:

- (i) Adv K Pillay SC (Convenor of the Committee);
- (ii) Ms D L J Tshepe from 01 April 2022 to 30 September 2022;
- (iii) Adv T Ngcukaitobi SC from 01 October 2022 to date;
- (iv) Ms H Matolo-Dlepu; and
- (v) Mr E Barnard.

### 2.1.3 Rules Committee

The Rules Committee is responsible for ensuring that the rules and procedures of the Commission are up to date. The following are its members:

- (i) Adv J Cane SC (Convenor of the Committee);
- (ii) Adv K Pillay SC;
- (iii) Ms D L J Tshepe from 01 April 2022 to 30 September 2022;
- (iv) Mr G M Magwanishe;
- (v) Prof C Marumoagae; and
- (vi) Ms H Matolo-Dlepu.

### 2.1.4 Complaints Committee

The Complaints Committee is responsible for ensuring that objections that are received after the closing date for the submission of comments and objections are placed before the Commission and considered. The Committee also advises the Commission if there are any complaints lodged with the JCC against candidates to be interviewed for judicial appointment. The following are its members:

- (i) Mr M Notyesi (Convenor of the Committee);
- (ii) Ms D L J Tshepe from 01 April 2022 to 30 September 2022;
- (iii) Adv T Ngcukaitobi SC from 01 October 2022 to date;
- (iv) Adv M S Baloyi SC;
- (v) Ms H Matolo-Dlepu; and
- (vi) Ms N Shabangu-Mndawe.

## 2.2 SPOKESPERSONS FOR THE COMMISSION

The Spokespersons for the Commission are Adv M S Baloyi SC, Ms D L J Tshepe from 01 April 2022 to 30 September 2022 and Mr M Notyesi from 01 October 2022 to date.

## 2.3 SECRETARIAT OF THE COMMISSION

Section 37 of the JSC Act makes provision for the assignment by the Secretary General (SG) of the Office of the Chief Justice (OCJ) of an appropriate number of personnel, one of whom must be designated as the Secretary of the Commission, from the staff in the OCJ to provide administrative support to the Commission.

In accordance with section 37(2) of the JSC Act, the Secretary of the Commission, under the supervision, control and direction of the Executive Secretary, must:

- (a) provide secretarial and administrative services to the Commission, the Committee and any Tribunal;
- (b) cause all records of matters dealt with by the Commission in terms of the JSC Act to be safeguarded;
- (c) maintain a register of all complaints dealt with by the JCC;
- (d) perform such functions as may from time to time be prescribed; and
- (e) generally, perform such secretarial and administrative tasks related to the work of the Commission, Committee or any Tribunal, as may from time to time be directed by the Chief Justice.

The Secretariat is made up of the following officials:

- (i) Ms Y van Niekerk: Acting Secretary of the Commission (01 April 2022 until 31 May 2022);
- (ii) Ms K Moretlwe: Acting Secretary of the Commission (01 June 2022 until 31 March 2023);
- (iii) Ms N Tshubwana: Law Researcher;
- (iv) Ms T Phaahlamohlaka: Senior Administrative Officer;
- (v) Ms T Ramonyai: Personal Assistant; and
- (vi) Ms B Ntsendwana: Administrative Officer.

## 3. REPORTS ON ACTIVITIES OF THE COMMISSION

### 3.1 MEETINGS OF THE COMMISSION

During 2022, the full Commission met on two occasions: From 04 April 2022 until 08 April 2022 and from 03 October 2022 until 11 October 2022. These meetings were convened as part of the Commission's bi-annual sittings. The aim of these meetings was to conduct interviews and advise the President of candidates to be appointed in Superior Courts.

On 25 July 2022 the JSC, constituted in terms of section 178(5) of the Constitution, met to decide whether to advise the President to suspend Judge President John Hlophe pending the conclusion of the process envisaged in section 177(1) of the Constitution. This consideration flowed from findings made by a Judicial Conduct Tribunal which inquired into certain allegations against Judge President Hlophe and made certain findings. It made findings that:

- (a) Judge President Hlophe's conduct breached the provisions of section 165 of the Constitution in that he improperly attempted to influence two Justices of the Constitutional Court to violate their oaths of office;
- (b) Judge President Hlophe's conduct seriously threatened and interfered with the independence, impartiality, dignity and effectiveness of the Constitutional Court;
- (c) Judge President Hlophe's conduct threatened public confidence in the judicial system; and
- (d) Judge President Hlophe was guilty of gross misconduct.

Despite the pending appeal against the decision of the full bench dismissing the review application brought by Judge President Hlophe against the findings of the JSC, it was necessary, for the JSC to consider whether to advise the President to suspend the Judge President. This was necessitated by the gravity of the findings against Judge President Hlophe and his abandonment of an attempt to interdict the JSC from advising the President to suspend him.

Following deliberations, it was decided by a majority vote that the JSC should, in terms of section 177(3) of the Constitution, advise the President to suspend Judge President Hlophe. The suspension would be subject to the condition that Judge President Hlophe be allowed to finalise part-heard matters and reserved judgments during the period of his suspension.

The JSC, constituted as contemplated from section 178(5) of the Constitution, also held a meeting on 26 January 2023 to consider the reports of the JCC on the complaints against Judge T Maumela and Judge Mngqibisa-Thusi of the Gauteng Division of the High Court relating to their failure to deliver numerous reserved judgments timeously or within a reasonable time. The JSC decided that these two Judges' failures to deliver reserved judgments within the prescribed time or within a reasonable time would, if established, prima facie indicate incapacity, gross incompetence or gross misconduct on the part of the Judges, considering the extent of the delays and the prejudice suffered by the parties. The JSC decided to request, in terms of section 19 of the JSC Act, the Chief Justice to appoint a Judicial Conduct Tribunal (Tribunal) to consider the complaints and to inform the President, in terms of section 19(4) of the JSC Act of its decision to request the Chief Justice to appoint a Tribunal.

### 3.2 APPOINTMENT OF JUDGES

Section 174(3) and (4)(a) to (c) of the Constitution provide:

“(3) The President as head of the national executive, after consulting the Judicial Service Commission and the leaders of parties represented in the National Assembly, appoints the Chief Justice and the Deputy Chief Justice and, after consulting the Judicial Service Commission, appoints the President and Deputy President of the Supreme Court of Appeal.

- (4) The other judges of the Constitutional Court are appointed by the President, as head of the national executive, after consulting the Chief Justice and the leaders of parties represented in the National Assembly, in accordance with the following procedure:
- (a) The Judicial Service Commission must prepare a list of nominees with three names more than the number of appointments to be made, and submit the list to the President.
  - (b) The President may make appointments from the list, and must advise the Judicial Service Commission, with reasons, if any of the nominees are unacceptable and any appointment remains to be made.
  - (c) The Judicial Service Commission must supplement the list with further nominees and the President must make the remaining appointments from the supplemented list."

### 3.3 JUDGES APPOINTED DURING THE PERIOD 01 APRIL 2022 - 31 MARCH 2023

During the period under review, thirty-three (33) vacancies were recorded in the Superior Courts, in respect of which the Commission had to interview candidates and advise the President on candidates to appoint as Judges. Of these vacancies, the Commission advised the President to appoint twenty-five (25) candidates. However, only twenty-four (24) candidates were appointed by the President as Judges as the appointment of the Judge President for the Limpopo Division of the High Court was held in abeyance due to pending litigation relating to the advice of the Commission to the President to appoint a certain candidate. Furthermore, the Commission was initially unable to recommend candidates for eight (8) vacancies, although in October 2022, two (2) of those eight (8) vacancies were filled, leaving six (6) vacancies unfilled due to a lack of suitable candidates.

The candidates appointed by the President on the advice of the Commission or appointed by the President from a list provided by the Commission in terms of 174(4) of the Constitution during the reporting year are reflected in the table below:

**Table 2: Judges appointed during the period 01 April 2022 to 31 March 2023**

Court	List of candidates supplied by the commission to the president from which the president appointed one	Judges appointed by the president
<b>Constitutional Court</b> (Two vacancies)	Adv A C Dodson SC Judge F Kathree-Setiloane Judge M B Molemela Judge O L Rogers The Commission advised that the other vacancy should not be filled.	Judge O L Rogers

Court	The names of candidates the jsc advised the president to appoint	Judges appointed by the president
<b>Supreme Court of Appeal</b> (Five vacancies)	Judge G G Goosen Judge K E Matojane Judge P A Meyer Judge D S Molefe Judge S E Weiner	Judge G G Goosen Judge K E Matojane Judge P A Meyer Judge D S Molefe Judge S E Weiner
<b>Eastern Cape Division of the High Court, Gqeberha</b> (Two vacancies)	Ms V P Noncembu Adv D O Potgieter SC	Ms V P Noncembu Adv D O Potgieter SC
<b>Free State Division of the High Court</b> (One vacancy)	Adv I Van Rhyn	Adv I Van Rhyn
<b>Limpopo Division of the High Court</b> (Two vacancies)	Adv N Naudè-Odendaal Adv T C Tshidada	Adv N Naudè-Odendaal Adv T C Tshidada

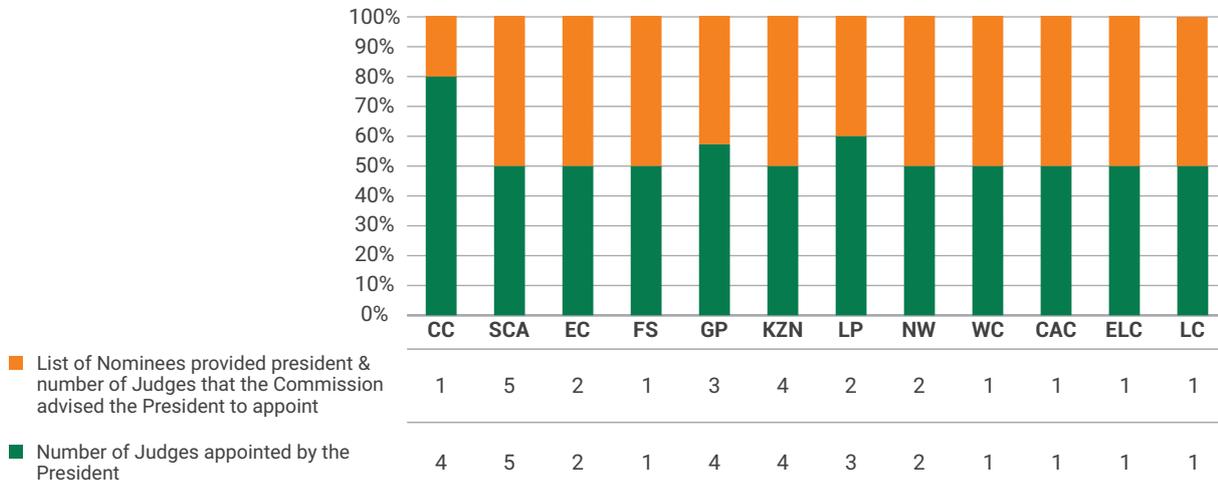
Court	The names of candidates the jsc advised the president to appoint	Judges appointed by the president
<b>Limpopo Division of the High Court</b> (One vacancy of Judge President)	Judge M G Phatudi	The President has not made this appointment because of litigation challenging the Commission's advice to the President to appoint the particular candidate.
<b>North West Division of the High Court</b> (One vacancy of Judge President)	Judge R D Hendricks	Judge R D Hendricks
<b>North West Division of the High Court</b> (One vacancy of Deputy Judge President)	Judge T J Djaje	Judge T J Djaje
<b>North West Division of the High Court</b> (One vacancy)	The JSC advised that none of the candidates it interviewed was suitable for appointment to fill the one vacancy available.	
<b>Gauteng Division of the High Court for secondment to the Land Claims Court</b> (One vacancy)	The JSC was unable to recommend a candidate to fill the vacancy due to the withdrawal of the only candidate a few days before the interview.	
<b>Gauteng Division of the High Court for the Secondment to the Land Claims Court</b> (One vacancy)	Ms L Flatela	Ms L Flatela
<b>Gauteng Division of the High Court</b> (Four vacancies)	Ms R Francis-Subbiah Adv J J C Swanepoel Adv S D J Wilson  The JSC could not recommend a candidate to fill one of the four vacancies because none of the candidates it interviewed were suitable for appointment to fill the fourth vacancy.	Ms R Francis-Subbiah Adv J J C Swanepoel Adv S D J Wilson
<b>KwaZulu-Natal Division of the High Court</b> (One vacancy of Judge President)	Judge T P Poyo-Dlwati	Judge T P Poyo-Dlwati
<b>KwaZulu-Natal Division of the High Court</b> (Two vacancies: Pietermaritzburg)	Adv Bezuidenhout SC Ms N F Mlaba	Adv Bezuidenhout SC Ms N F Mlaba
<b>Western Cape Division of the High Court</b> (One vacancy)	Ms C N Nziweni	Ms C N Nziweni
<b>Competition Appeal Court</b> (One vacancy of Judge President)	Judge N M Manoim	Judge N M Manoim as Judge President of the Competition Appeal Court.
<b>Electoral Court</b> (One vacancy of a Chairperson)	Judge D Zondi	Judge D Zondi as Chairperson
<b>Electoral Court</b> (Two vacancies of a Judge Member)	The JSC advised that no appointment be made with regard to these vacancies at that stage.	None

During the period under the review, the JSC held a special sitting on 20 June 2022, to interview the President of the Supreme Court of Appeal, Justice M M L Maya, for the position of the Deputy Chief Justice of the Republic of South Africa.

Following the interview, the JSC resolved that Justice Maya was suitable for appointment as the Deputy Chief Justice of the country. The President subsequently appointed Justice Maya with effect from 01 September 2022 as the Deputy Chief Justice of the Republic of South Africa after consulting the JSC and the leaders of parties represented in the National Assembly.

Figure 1: Graph illustrating the Judges that the Commission advised the President to appoint in terms of Section 174(6) and, in the case of the Constitutional Court, the list of nominees provided to the President in terms of Section 174(4)(a).

### Number of Judges appointed during 1 April 2022 -31 March 2023

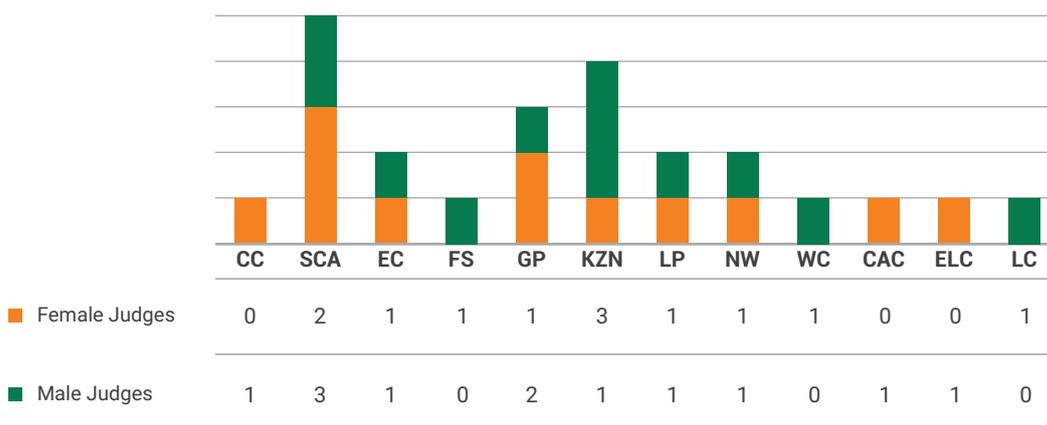


### 3.3.1 Race and gender profile of judges appointed during the period 01 April 2022 to 31 March 2023

A total of twenty-four (24) Judges were appointed by the President during the period under review. The gender composition of the newly appointed Judges was twelve (12) females and twelve (12) males and is depicted in the figure below:

Figure 2: Gender Overview of the appointed Judges during the period 01 April 2022 to 31 March 2023

### Gender Overview: Appointed Judges during the period 1 April 2022 to 31 March 2023



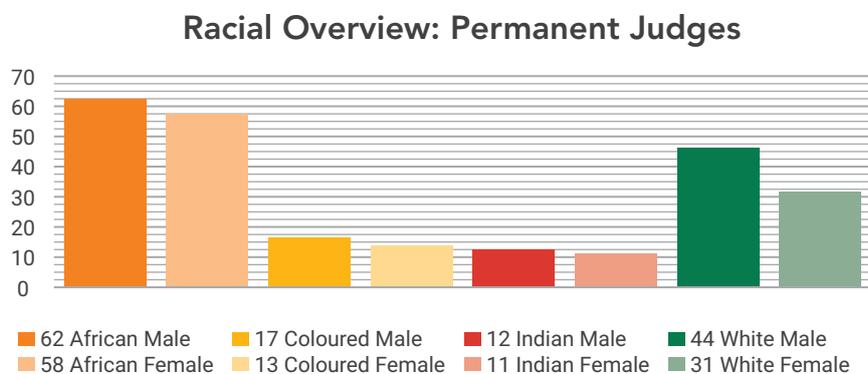
**Table 3: Number of Judges appointed during the period 01 April 2022 to 31 March 2023 specifying gender and race**

Court	Number of candidates included in the list provided to the president	Number of judges appointed by the president	Number of females & race	Number of males & race
Constitutional Court	4	1	0	1 (White)

Court	Number of candidates the JSC advised the president to appoint	Number of judges appointed by the president	Number of females & race	Number of males & race
Supreme Court of Appeal	5	5	1 (African) 1 (White)	2 (White) 1 (African)
Eastern Cape Division of the High Court	2	2	1 (African)	1 (African)
Free State Division of the High Court	1	1	1 (White)	0
Gauteng Division of the High Court	4	3	1 (Indian)	2 (White)
KwaZulu-Natal Division of the High Court	4	4	2 (African) 1 (White)	1 (White)
Limpopo Division of the High Court	3	2	1 (White)	1 (African)
North West Division of the High Court	3	2	1 (African)	1 (Coloured)
Western Cape Division of the High Court	1	1	1 (African)	0
Competition Appeal Court	1	1	0	1 (White)
Electoral Court	1	1	0	1 (African)
Gauteng Division of the High Court (Secondment to the Land Claims Court)	1	1	1 (African)	0
<b>Total</b>	<b>30</b>	<b>24</b>	<b>12</b>	<b>12</b>

Following the two sittings of the Commission during the reporting period and the subsequent appointments made by the President, the Judiciary, as at 31 March 2023, is made up of a total of 248 Judges. The racial overview of all permanent Judges is illustrated in the figure below:

**Figure 3: The racial overview of permanent Judges during the period under review**



The table below illustrates the racial breakdown of the Judges per Superior Court:

**Table 4: The racial breakdown of the Judges per Superior Court:**

Divisions	African		Coloured		Indian		White		Total	%
	M	F	M	F	M	F	M	F		
Constitutional Court	3	3	1	1	1	0	1	0	10	4,0%
Supreme Court of Appeal	6	6	1	2	1	1	4	2	23	9,3%
Eastern Cape Division, Makhanda	2	2	1	0	2	0	3	0	10	11,7%
Eastern Cape Local Division, Gqeberha	2	2	0	0	0	0	3	0	7	6,0%
Eastern Cape Local Division, Bhisho	2	0	0	0	0	0	0	2	4	30,2%
Eastern Cape Local Division, Mthatha	2	3	0	0	0	1	2	0	8	11,3%
Free State Division, Bloemfontein	4	3	1	0	0	1	2	4	15	2,8%
Gauteng Division, Pretoria	11	12	0	0	1	2	7	7	40	3,2%
Gauteng Local Division, Johannesburg	6	5	3	1	3	2	8	7	35	2,4%
KwaZulu-Natal Division, Pietermaritzburg	3	4	0	0	2	0	4	1	14	1,6%
KwaZulu-Natal Local Division, Durban	3	2	2	1	1	3	1	1	14	12,9%
Limpopo Division, Polokwane	2	1	0	0	0	0	1	1	5	4,4%
Limpopo Local Division, Thohoyandou	2	0	0	0	0	0	0	0	2	4,0%
Mpumalanga Division, Mbombela	4	2	0	0	0	0	0	0	6	9,3%
Mpumalanga Local Division, Middelburg	0	2	0	0	0	0	0	0	2	11,7%
Northern Cape Division, Kimberley	2	2	0	1	0	0	1	0	6	6,0%
North West Division, Mahikeng	0	1	1	0	0	0	1	1	4	30,2%
Western Cape Division, Cape Town	6	4	7	6	1	1	4	3	32	11,3%
Labour Court	2	4	0	1	0	0	2	2	11	2,8%
Labour Appeal Court	0	1	3	0	0	0	1	0	5	-
Competition Appeal Court <sup>2</sup>	3	4	1	0	1	1	4	1	15	-
Land Claims Court <sup>2</sup>	1	0	0	1	0	2	0	1	5	-
<b>TOTAL</b>	<b>62</b>	<b>58</b>	<b>17</b>	<b>13</b>	<b>12</b>	<b>11</b>	<b>44</b>	<b>31</b>	<b>248</b>	<b>100%</b>
<b>PERCENTAGE</b>	<b>25%</b>	<b>23%</b>	<b>7%</b>	<b>5%</b>	<b>5%</b>	<b>4%</b>	<b>18%</b>	<b>13%</b>	<b>100%</b>	
<b>TOTAL</b>	<b>120</b>		<b>30</b>		<b>23</b>		<b>75</b>		<b>248</b>	
<b>PERCENTAGE</b>	<b>48%</b>		<b>12%</b>		<b>9%</b>		<b>30%</b>		<b>100%</b>	

At the end of the reporting period, the Judiciary was made up of a total of 248 Judges in all Superior Courts of which 25% (62) were African male, 23% (58) were African female, 7% (17) were Coloured male, 5% (13) were Coloured female, 5% (12) were Indian male, 4% (11) were Indian female, 18% (44) were White male and 13% (31) were White female.

A racial breakdown indicated that from the total of 248, 48% (120) comprised Judges of African origin, 12% (30) Coloured, 9% (23) Indian and 30% (75) White.

A gender breakdown of the Judiciary reflected that at the end of the period under review the Judiciary comprised 54% (135) males and 46% (113) females. Noteworthy, is the transformation in the following Divisions with female representation in the Judiciary of 50% or more: Eastern Cape Local Division, Bhisho (50%), Eastern Cape Local Division, Mthatha (50%), Free State Division, Bloemfontein (53%), Gauteng Division, Pretoria (53%); KwaZulu-Natal Local Division, Durban (50%), Mpumalanga Local Division, Middelburg (100%), Northern Cape Division, Kimberley (50%), North West Division, Mahikeng (50%) and Labour Court (64%).

### 3.4 APPOINTMENT OF THE NATIONAL WATER TRIBUNAL CHAIRPERSON

During the period under review, the Minister of Water and Sanitation, Mr S Mchunu requested the Commission to shortlist, interview and recommend candidates for his consideration for appointment as the Chairperson of the Water Tribunal. This was done in accordance with section 146(5) of the National Water Act 36 of 1998. A notice was published in the Government Gazette and national newspapers on 22 and 24 May 2022 by the Minister, calling for nominations to fill various positions, including the Chairperson of the National Water Tribunal.

The JSC received seven (7) nominations and, at its meeting on 26 July 2022, the Screening Committee of the JSC decided to shortlist two candidates.

On 11 October 2022, the JSC held a meeting to interview the candidates. In the absence of the Chief Justice, the Deputy Chief Justice chaired the meeting to interview the two candidates that were shortlisted. Following the conclusion of the interviews, the Commission found that neither candidate was suitable for the position.

In November 2022, Minister Mchunu published a notice in the Government Gazette and national newspapers calling for nominations for the position of the Chairperson of the National Water Tribunal. On 30 January 2023, the Screening Committee of the JSC shortlisted the following candidates to be interviewed for the vacancy:

- a). Adv Z Hoosen
- b). Adv P Loselo
- c). Mr T A Nkosi
- d). Adv D Welgemoed

At the end of the period under review, the candidates were scheduled to be interviewed by the Commission at its sitting on 21 April 2023.



## 4. REPORT ON THE ACTIVITIES OF THE JUDICIAL CONDUCT COMMITTEE

Section 8 of the Judicial Service Commission (JSC) Act, 1994, provides for the establishment of the Judicial Conduct Committee (JCC) to receive, consider and deal with complaints against Judges.

### 4.1 COMPOSITION OF THE JUDICIAL CONDUCT COMMITTEE

The JCC consisted of the Chief Justice, the Deputy Chief Justice and four other Judges, two of whom were women, as contemplated in section 8 of the JSC Act.

In accordance with section 8(3) of the JSC Act, the Chief Justice may, either generally or in a specific case, delegate any of his or her powers or functions as Chairperson of the Committee to the Deputy Chief Justice. During the period under review, the four Judges designated by the Chief Justice in terms of section 8(1)(c) of the JSC Act, in consultation with the Minister of Justice and Correctional Services, were:

- (a) Justice B E Nkabinde;
- (b) Justice D H Zondi;
- (c) Justice T M Makgoka;
- (d) Justice N P Mabindla-Boqwana designated during the period 16 December 2022 to date; and
- (e) Judge M Victor designated during the period 15 December 2020 to 15 December 2022.

### 4.2 MEETINGS OF THE JUDICIAL CONDUCT COMMITTEE

Section 9(1) of the JSC Act provides for the meetings of the Committee to be determined by the Chairperson.

On 05 December 2022, the Committee considered appeals in accordance with section 18(1) of the JSC Act. A total of thirteen (13) appeals were referred to the Committee for consideration. All thirteen appeals were referred to the Committee in terms of section 15(5) of the JSC Act. Judgment in these thirteen (13) appeals were outstanding at the expiry of the reporting period.

### 4.3 REPORT ON JUDICIAL COMPLAINTS

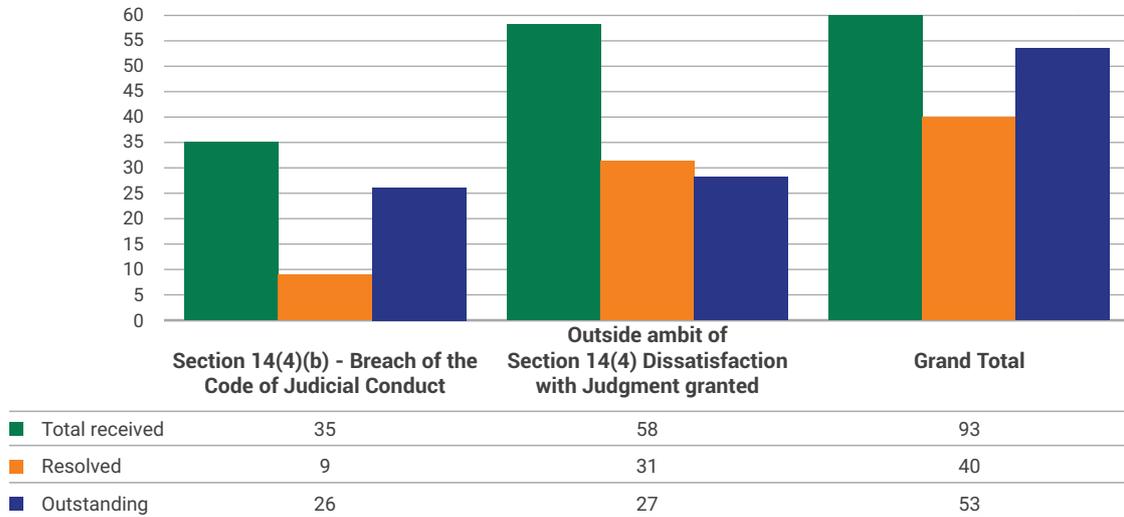
In accordance with section 14(1) of the JSC Act "any person may lodge a complaint about a judge with the Chairperson of the Committee".

Section 14(4) sets out the grounds upon which any complaint against a judge may be lodged. These are:

- (a) "Incapacity giving rise to a judge's inability to perform the functions of judicial office in accordance with prevailing standards, or gross incompetence, or gross misconduct, as envisaged in section 177(1)(a) of the Constitution;
- (b) Any wilful or grossly negligent breach of the Code of Judicial Conduct referred to in section 12, including any failure to comply with any regulation referred to in section 13 (5);
- (c) Accepting, holding or performing any office of profit or receiving any fees, emoluments or remuneration or allowances in contravention of section 11;
- (d) Any wilful or grossly negligent failure to comply with any remedial step, contemplated in section 17(8), imposed in terms of this Act; and
- (e) Any other wilful or grossly negligent conduct, other than conduct contemplated in paragraph (a) to (d), that is incompatible with or unbecoming the holding of judicial office, including any conduct that is prejudicial to the independence, impartiality, dignity, accessibility, efficiency or effectiveness of the courts."

Figure 4: Complaints received and resolved during the reporting period

Complaints received and resolved during April 2022 to March 2023

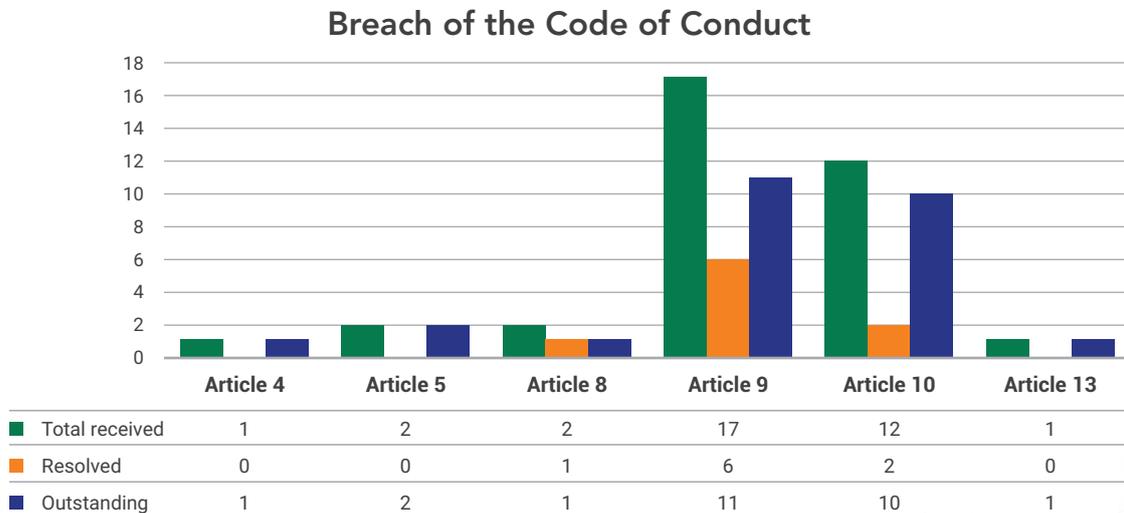


For the previous reporting period namely the 2021/2022 financial year, a total number of 95 complaints were received of which 46% (44) were resolved and 54% (51) were carried over into the period under review. For the period under review, namely the 2022/2023 financial year, a total number of ninety-three (93) complaints were received and 43% (40) complaints were resolved, whilst 57% (53) were outstanding at the end of the reporting period. The outstanding complaints were carried forward to the next financial year.

Noteworthy is that 62% (58) of complaints received during the period under review, were outside the ambit of section 14(4) of the JSC Act, which provides the grounds upon which any complaint against any Judge may be lodged, whilst 38% (35) related to a breach of conduct in terms of section 14(4)(b) of the JSC Act.

Of the thirty-five (35) complaints that related to a breach of the Code of Judicial Conduct in terms of section 14(4)(b) of the JSC Act, 49% (17) of the complaints related to Article 9 of the Code of Judicial Conduct (Fair Trial), while 34% (12) related to Article 10 of the Code of Judicial Conduct (Diligence). A breakdown of these thirty-five (35) complaints is depicted in the figure below:

Figure 5: Breakdown of the Complaints in terms of the Code of Judicial Conduct



Of the forty (40) complaints resolved, nine (9) related to alleged breaches of the Code of Judicial Conduct and were summarily dismissed, in terms of section 15(2)(d) of the JSC Act, on the basis that they were frivolous or lacking in substance. A further thirty-one (31) complaints were dismissed in terms of section 15(2)(c) on the basis that they solely related to the merits of judgments or orders. These complaints were resolved within an average of 4.1 months.

The table below provides an overview of the complaints received against Judges and the manner in which they were dealt with during the period under review:

**Table 5: Complaints received from 01 April 2022 - 31 March 2023**

Superior court	Total number of complaints received	Resolved	% Resolved	Average number of months from receipt to resolution	Pending	% Pending
Constitutional Court	4	1	25%	3,0	3	75%
Supreme Court of Appeal	4	1	25%	0,6	3	75%
Eastern Cape Division	8	2	25%	8,0	6	75%
Free State Division	3	2	67%	2,5	1	33%
Gauteng Division	39	20	51%	4,1	19	49%
KwaZulu-Natal Division	9	3	33%	2,3	6	67%
Limpopo Division	4	3	75%	8,3	1	25%
Mpumalanga Division	1	1	100%	1,0	0	0%
North West Division	1	1	100%	4,0	0	0%
Northern Cape Division	2	1	50%	3,0	1	50%
Western Cape Division	5	2	40%	4,0	3	60%
Labour Court	13	3	23%	2,7	10	77%
<b>Total</b>	<b>93</b>	<b>40</b>	<b>43%</b>	<b>4,1</b>	<b>53</b>	<b>57%</b>

A comparison of the number of complaints received and the number of resolved complaints as well as those that remained unresolved over the past three-year period is reflected in the table below.

**Table 6: Overview of complaints for three (3) consecutive years**

Financial Year	Complaints received	Complaints resolved at the end of the reporting period	% Resolved	Unresolved Complaints carried forward	% Unresolved	Resolved Cases at the end of 22/23 reporting period	Total resolved	% Resolved at the end of the 22/23 reporting period	Pending from Previous financial years	% Pending
2020/21	162	81	50%	81	50%	73	154	95%	8	5%
2021/22	95	44	46%	51	54%	32	76	80%	19	20%
2022/23	93	40	43%	53	57%	40	40	43%	53	57%
<b>Total number</b>	<b>350</b>	<b>165</b>	<b>47%</b>	<b>185</b>	<b>53%</b>	<b>145</b>	<b>270</b>	<b>77%</b>	<b>80</b>	<b>23%</b>

During the 2020/2021 reporting period, a total of 162 complaints was received, of which 81 complaints, representing 50%, were resolved at the end of that reporting period. A total of 81 (50%) complaints remained unresolved and were carried forward to the next financial year (2021/2022). Noteworthy, is that 5% (8) of those complaints remained unresolved at the end of the reporting period.

During the reporting period 2021/2022, a total of 95 complaints was received, apart from the 81 complaints carried forward from the 2020/2021 financial year. From the total of 95 complaints, 44 (46%) complaints were resolved during the same reporting period. A total of 51 (54%) complaints remained unresolved at the end of this reporting period and were carried forward to the next financial year (2022/2023). Noteworthy, is that 20% (19) of those complaints remained unresolved at the end of the reporting period. During the current reporting period 2022/2023, a total of 93 complaints were received apart from the total of 60 (51 and 8) complaints carried forward from the previous financial years. From the 93 complaints received, 40 (43%) complaints were resolved during the 2022/2023 reporting period and a total of 53 (57%) remained unresolved at the end of the financial year and will be carried forward to the next financial year (2023/2024).

In summary, over the three-year period, a total of 350 complaints were received of which 270 were resolved and a total of 80 remained unresolved representing 23% of the total number of complaints received over the three-year period.

## 4.4 JUDICIAL CONDUCT TRIBUNALS

Section 19 of the JSC Act provides for the Commission to request the Chief Justice to appoint a Judicial Conduct Tribunal on account of a recommendation by the Committee or on any other grounds, that there are reasonable grounds to suspect that a Judge is suffering from an incapacity, is grossly incompetent or is guilty of gross misconduct. The following tribunals were appointed:

### 4.4.1 Complaint against Judge T A N Makhubele

During the period under review, a new Tribunal President, retired Judge President A Jappie, was appointed to replace Justice F D J Brand, following his recusal. On 14 November 2022, a pre-trial conference was held and it was agreed that Judge Makhubele's hearing would take place on 20 - 24 February 2023. The hearing, however, commenced on 21 February 2023 due to the unavailability of Counsel for Judge Makhubele.

The Evidence leader led evidence of only two witnesses. The Tribunal was postponed to 08 - 19 May 2023, which forms part of the next reporting period.

### 4.4.2 Complaints against Judge M K Parker

Since the establishment of the Tribunal during October 2020 to investigate the complaints against Judge Parker, his state of health has prevented the commencement of the Tribunal.

## 5. REPORT ON THE REGISTER OF JUDGES' REGISTRABLE INTERESTS

Section 13(3) of the JSC Act requires that every Judge must disclose to the Registrar of Judges' Registrable Interests (Registrar) particulars of all his or her registrable interests and those of her or his immediate family members, where applicable. The disclosure is done annually.

In the 2022/2023 Financial Year there were two hundred and forty-eight (248) Judges in active service and two hundred and forty-six (246) Judges had disclosed their registrable interests by 31 March 2023 as stipulated in the Regulations on Judges' Registrable Interests. Two (2) Judges in the Gauteng Division of the High Court of South Africa had not disclosed their registrable interests by 31 March 2023 as prescribed by the Regulations on Judges' Registrable Interests. The Judges who did not disclose their registrable interests were subjected to the application of regulation 3(6) of the Regulations on Judges Registrable Interest.

Regulation 3(6) states that, if the Registrar has reason to believe that any Judge has failed or is failing to comply with a provision of the Regulations, the Registrar must, without delay, invite that Judge in writing to comply with the provision in question. If, after thirty (30) days of receiving a written invitation in terms of sub-regulation (6), the Registrar still has reason to believe that the Judge has failed or is failing to comply with the provision of the Regulations, the Registrar must, without delay, lodge a complaint against the Judge in the manner contemplated in section 14(3) of the Act. The two Judges subsequently disclosed their registrable interests by 30 April 2023.

In terms of regulation 3(2) of the Regulations on Judges' Registrable Interests, newly appointed Judges are required to disclose their registrable interests to the Registrar within 30 days of their appointment. The Registrar is required to enter the particulars of a disclosure by a Judge in the Register of Registrable Interests and thereafter cause a copy of all entries relating to that Judge to be communicated to the Judge, as per (regulation 3(3) of the Regulations on Judges' Registrable Interests.

In the 2022/2023 financial year, thirteen (13) newly appointed Judges commenced active service in the Judiciary of South Africa. These Judges disclosed their registrable interests within 30 days of appointment as prescribed by the Regulations and the disclosed information has been entered into the Register and copies of entries made to the Register were provided to the Judges in terms of the regulation 3(3) of the Regulations on Judges' Registrable Interests.

Regulation 5 of the Regulations, requires the Registrar to include in its annual report to the JSC the names of those Judges in active service who have disclosed interests of their family members. During the 2022/2023 financial year, five (5) Judges disclosed interests of their family members. The interests disclosed with respect to family members are recorded in the confidential section of the Register in accordance with r the Regulations.

## 6. REPORT ON OTHER MATTERS

### 6.1 LITIGATION AGAINST THE COMMISSION

During the 2022/2023 financial year, ten (10) matters were initiated or pending in the courts. At the end of the financial year under review, all ten (10) matters were still pending in the courts and the reason for these pending matters are set out in the table below:

**Table 7: Litigation case overview**

Item	Litigation matter	Date initiated	Pending	Reason for pending
1.	Freedom Under Law v Judicial Service Commission and Another	10 July 2020	36 months	Hearing set down for 11 May 2023
2.	Maseko A A v Molemela JA and Others	08 November 2021	13 months	Judgment reserved
3.	WL Seriti and MT Musi v JSC and Others	01 July 2021	17 months	Judgment reserved
4.	Hlophe JP	14 September 2021	15 months	Hlophe JP is dominus litis and has not taken further steps.
5.	Amalgamated Lawyers Association v JSC	13 April 2023	5 months	Awaiting outcome of Case Management
6.	Mpumalanga Society of Advocates vs JSC and others	25 November 2021	13 months	Judgment reserved
7.	Poswa J v JSC	11 February 2022	13 months	Parties to file Heads of Argument
8.	Montshiwa vs JSC and others	28 April 2022	11 months	JSC is yet to file supplementary Heads of Argument
9.	Hlophe JP v JSC	29 August 2022	7 months	JSC to file its Answering Affidavit
10.	Sekgala v JSC	01 January 2023	2 months	JSC to file replying affidavit

A summary of litigation matters against the JSC is as follows:

#### 6.1.1 Freedom Under Law v Judicial Service Commission and Another

**Date of initiation:** 10 July 2020

**Reason for pending:** Hearing set down for 11 May 2023.

**Overview of the matter:** Freedom Under Law (FUL) launched an application in the Gauteng Division of the High Court, Johannesburg, to have the High Court review and set aside a decision of the JSC taken on 10 October 2019 which rejected the finding of the Judicial Conduct Tribunal that Judge N J Motata was guilty of gross misconduct and imposed a fine of R1.1 million against him.

FUL also asked the Court to replace the JSC's decision with a finding that Judge Motata was guilty of gross misconduct or suffering from some form of incapacity as stipulated in section 177(1)(a) of the Constitution. The JSC opposed the application. The parties have filed all the papers. The matter was heard on 02 February 2022 and judgment was reserved. On 12 April 2022 the court dismissed the review application. The determination of another complaint by Mr Pretorius was remitted to the JSC for a decision to be made thereon in terms of Section 20 of the JSC Act. Mr Pretorius was one of the complainants.

The JSC and FUL filed an appeal and cross-appeal, respectively. The application for leave to appeal was granted. As at the end of the period under review the matter had been set down for hearing on 11 May 2023.

### 6.1.2 Maseko A A v Molemela JA and Others

**Date of initiation:** 8 November 2021

**Reason for pending:** Judgment reserved

**Overview of the matter:** Mr A A Maseko launched an application in the Gauteng Division of the High Court seeking to replace the decisions of the JCC as per Molemela JA and the Appeal Committee constituted by Khampepe ADCJ, Zondi JA and Dambuza JA. Mr Maseko is aggrieved by the JCC's decision to dismiss his complaint and appeal that he had lodged against the late Judge Steenkamp. The JSC is opposing this matter. Counsel was appointed to represent the JSC. Mr Maseko set the matter down in the unopposed roll on 11 March 2021, despite the JSC having filed an answering affidavit. Mr Maseko, however, failed to appear before the Court and the matter was struck off the roll.

Mr Maseko re-enrolled the matter for hearing on 08 November 2021. The matter was referred to the Office of the Deputy Judge President for case management, which was done on 06 December 2021. The matter was set down for hearing on 15 June 2022 and judgment was handed down on 15 December 2022. On 10 January 2023, Mr Maseko applied for leave to appeal, which the JSC opposed. The leave to appeal was heard on 16 February 2023 and upon hearing arguments by the parties, Olivier AJ requested the Counsel of the JSC to make legal submissions on certain issues in order to assist the court.

The submissions were filed by 07 March 2023 and at the end of the period under review, the judgment was still reserved.

### 6.1.3 WL Seriti and MT Musi v JSC and Others

**Date of initiation:** 1 July 2021

**Reason for pending:** Awaiting judgment

**Overview of the matter:** Judges Musi and Seriti were the Commissioners of the Commission of Inquiry into Allegations of Fraud, Corruption, Impropriety or Irregularity in the Strategic Defence Procurement Package (Arms Deal Commission). This matter is a sequel to the decision of the Gauteng Division of the High Court, Pretoria, reviewing and setting aside the findings and conclusions of the Arms Deal Commission. As a result of the decision of the Gauteng Division of the High Court, Pretoria, Shadow World Investigations and Open Secrets lodged a complaint against Judge Seriti and Judge Musi with the JCC, contending that the two Judges committed gross misconduct in their handling of the Arms Deal Commission.

In response, Judge Seriti and Judge Musi brought an application in the Gauteng Division of the High Court. They sought an order declaring that the definition of "judge" in section 7(1)(g) of the JSC Act did not include a retired Judge, and that, if the court concluded that the word included a retired Judge, it should declare section 7(1)(g) of the JSC Act, unconstitutional and invalid.

The purpose of the relief sought was to insulate the two (2) Judges (who are now retired) from being subjected to the disciplinary procedures of the JSC. In essence the two Judges contend that, once a Judge is retired from active service, he or she may no longer be subjected to disciplinary procedures provided for in the JSC Act. The JSC is opposing this application. The matter was heard by a Full Bench on 14 March 2023 (per Sutherland DJP, Wepener J and Molahlehi J). As at the end of the period under review the judgment was still pending.

#### 6.1.4 Hlophe M J v JSC and Others

**Date of initiation:** 14 September 2021

**Reason for pending:** JSC awaiting formal communication from Hlophe JP explaining the legal basis for the contention that the JSC should fund his defence. To date, such communication has not been forthcoming.

**Overview of the matter:** A Judicial Conduct Tribunal (Tribunal) which conducted an inquiry into allegations that Judge President Hlophe had improperly attempted to influence Justices of the Constitutional Court in 2008 in a matter involving former President Jacob Zuma found Judge President Hlophe guilty of gross misconduct on 09 April 2021. The Commission met on 25 August 2021 to consider the findings of this report as contemplated in section 20 of the JSC Act. The Commission found Judge President Hlophe guilty of gross misconduct and referred the matter to the National Assembly to perform its functions in terms of section 177(1)(b) of the Constitution.

Judge President Hlophe launched an urgent application in the Gauteng Division of the High Court for an order to stay the process for his suspension by the President under section 177(3) of the Constitution as well as to stay the process of impeachment by the National Assembly which process is regulated by section 177(1)(b) of the Constitution.

Judge President Hlophe further sought an order declaring the decision of the JSC taken at the meeting held on 25 August 2021, to be unconstitutional and invalid. Additionally, he also sought to have the decision of the Tribunal reviewed and set aside. Hlophe JP abandoned the urgent application relating to the stay of the process of suspension following the JSC's decision not to recommend to the President at that stage that he be suspended.

In March 2022 a Full Bench of the Gauteng Division of the High Court dismissed Judge President Hlophe's application. Judge President Hlophe filed an application for leave to appeal. The JSC instructed the State Attorney to oppose the application for leave to appeal. The judgment was handed down on 22 June 2022 and Judge President Hlophe was granted leave to appeal to the Supreme Court of Appeal.

On 01 November 2022, the Commission received a letter from the legal representative of Judge President Hlophe stating that the Judge President would not be able to cover the substantial costs in this matter. They requested the JSC to cover Judge President's costs of preparing the appeal record and Judge President Hlophe's legal representation in this matter.

The matter was brought to the attention of the JSC Litigation Committee and the Committee requested a legal basis on which it was contented that the Commission was obliged to fund Judge President Hlophe. The JSC has not yet received a response from the legal representative of Hlophe JP and no record was filed.

### 6.1.5 The Mpumalanga Society of Advocates v JSC and Others

**Date of initiation:** 25 November 2021

**Reason for pending:** The JSC elected to withdraw its notice to oppose and abides by the decision of the Court. The JSC awaits judgment to be handed down in this matter.

**Overview of the matter:** The Mpumalanga Society of Advocates launched an application to have the decision of JSC to recommend the third Respondent (Adv Roelofse) for appointment as a Judge of the Mpumalanga Division of the High Court on 8 October 2021 declared unlawful, invalid and unconstitutional. Additionally, that the decision of the JSC to recommend the third respondent for Judicial appointment to the President be reviewed and set aside and the matter be remitted to JSC for reconsideration.

The JSC initially opposed the application but a resolution was later taken to file a notice to abide with the court's decision on the matter and to file an explanatory affidavit describing the process and setting out the basis for the JSC's decision. The JSC has since filed the explanatory affidavit and instructed the State Attorney to file a notice of withdrawal of its opposition.

### 6.1.6 Poswa J v Judicial Service Commission

**Date of initiation:** 11 February 2022

**Reason for pending:** Parties to file their heads of Argument

**Overview of the matter:** The JSC found Judge Poswa guilty of misconduct and imposed a sanction of two remedial steps comprising an apology to the litigants and a reprimand as envisaged in section 17(8)(a) and (b) of the JSC Act. Judge Poswa launched an application in the North Gauteng High Court for an order to review and set aside the decision by the JSC.

Counsel was appointed to represent the JSC. On 05 August 2022, the Committee received the applicant's supplementary affidavit. However, on 11 August 2022, the JSC was notified by the State Attorney that the appointed Senior Counsel in this matter had passed away. The State Attorney appointed new Counsel on 23 November 2022, which enabled the JSC to file an answering affidavit. On 14 December 2022, the JSC received a request for extension of time from Judge Poswa's legal representative for the purpose of filing their replying affidavit which was late due to Judge Poswa ill health. The JSC agreed to grant Judge Poswa an extension. At the end of the period under review, Judge Poswa had filed his replying affidavit. Following the filing, the parties commenced with the drafting of the Heads of Argument.

### 6.1.7 Montshiwa v JSC and Others

**Date of initiation:** 28 April 2022

**Reason for pending:** The JSC is yet to file its supplementary Heads of Argument

**Overview of the matter:** Mr Montshiwa, launched an application in Court to review the decision by the JSC relating to the recommendation to appoint Deputy Judge Hendricks as a Judge President of the Division of the North West High Court. Counsel was appointed to represent the JSC. The JSC filed its answering affidavit on 16 August 2022 and on 14 September 2022, Mr Montshiwa served the JSC with an interlocutory application. The JSC instructed the State Attorney to oppose the application. The interlocutory application was set down on 24 January 2023 and the application was removed from the roll with the applicant ordered to pay costs on attorney and client scale.

Mr Montshiwa served the JSC with an application to appeal the costs order and on 15 February 2023 filed supplementary Heads of Argument in the interlocutory application. At the end of the period under review, Counsel representing the JSC was finalising its supplementary Heads of Argument.

### 6.1.8 Hlophe JP v JSC

**Date of initiation:** 29 August 2022

**Reason for pending:** The JSC is yet to file its Answering Affidavit

**Overview of the matter:** Judge President Hlophe launched a review application to have the court set aside the decision taken by the JSC on 25 July 2022, which entails an advisory to the President to suspend him, pending the conclusion of the process envisaged in section 177 (1) of the Constitution. In addition, he seeks an order declaring that the JSC's decision taken on 25 July 2022 to advise the President to suspend him to be unlawful and therefore unconstitutional and invalid. Judge President Hlophe also seeks an order declaring that the JSC was not lawfully constituted at its meeting held on 25 July 2022, when it resolved to advise the President to suspend him from Judicial Office. On 19 January 2023, Judge President Hlophe amended his notice of motion and filed a supplementary affidavit in which he seeks to compel the State to fund his legal costs. This relief is opposed by the State Respondents.

### 6.1.9 Amalgamated Lawyers Association v JSC and Others

**Date of initiation:** 19 October 2022

**Reason for pending:** Case management to be conducted on 13 April 2023

**Overview of the matter:** Amalgamated Lawyers Association (ALA) instituted a review application for an order declaring that the Judicial Service Commission's conduct, in the interviews of the third, fourth and fifth respondents ((Judge Phatudi) on 5 October 2022, for purposes of the JSC decision, was unlawful. Furthermore, the JSC decision announced on 05 October 2022, to list and recommend Judge Phatudi to the second respondent, the President of the Republic of South Africa, in terms of section 174(6) of the Constitution, for appointment as Judge President of the Limpopo Division of the High Court is reviewed, declared invalid and set aside and lastly that the matter be remitted to the first respondent (the JSC) for reconsideration or to commence de novo before the JSC, following a fair process that complies with the requirements of section 174 (1) of the Constitution. The JSC opposes the application.

On 27 October 2022, Amalgamated Lawyers Association served the JSC with an order interdicting the President from implementing the decision taken by the JSC on 05 October 2022, to recommend Judge Phatudi for appointment as Judge President of the Limpopo Division of the High Court pending the final determination of the review application proceedings issued under case number 22/27367.

On 25 November 2022, the JSC received a letter addressed to the Chief Justice, indicating that the President has, in terms of section 174(6) of the Constitution, appointed Judges in the Superior Courts and various Divisions of the High Court following the advice of the JSC. The letter also stated that the President decided not to appoint Judge M G Phatudi as the Judge President of Limpopo Division of the High Court due to the pending litigation. The JSC then filed a notice of withdrawal in respect of the interim application and has since filed an answering affidavit in the review application. The applicant has not filed its replying affidavit. On 24 March 2023, the State Attorney addressed a letter to Deputy Judge President Sutherland of the Gauteng Division of the High Court, Johannesburg, requesting that the matter be case managed. The matter was set down for case management on 13 April 2023 and will be further reported on in the 2023/2024 financial year.

#### 6.1.10 Sekgala v JSC

<b>Date of initiation:</b>	1 January 202
<b>Reason for pending:</b>	The JSC to file its Answering Affidavit
<b>Overview of the matter:</b>	Mr Sekgala instituted an application to review and set aside the decision of the Judicial Conduct Appeals Committee on 24 July 2022 relating to the dismissal of his complaint that he lodged with the JSC on 02 August 2021. In addition, he requested that the matter should be referred back to the JSC for a proper decision. The JSC is opposing the application and furnished the State Attorney with a record on 28 February 2023. Counsel has been appointed in this matter and at the end of the period of review consultation was scheduled to take place on 11 April 2023. The matter will be further reported on in the 2023/2024 financial year.

## 6.2 BUDGET OF THE COMMISSION

The Commission was allocated a total budget of R11.9 million in the 2022/2023 Financial Year. The total budget for the Commission consists of R2.4 million for the compensation of employees and R9.5 million for goods and services. The total expenditure at the end of the Financial Year was R11.9 million.

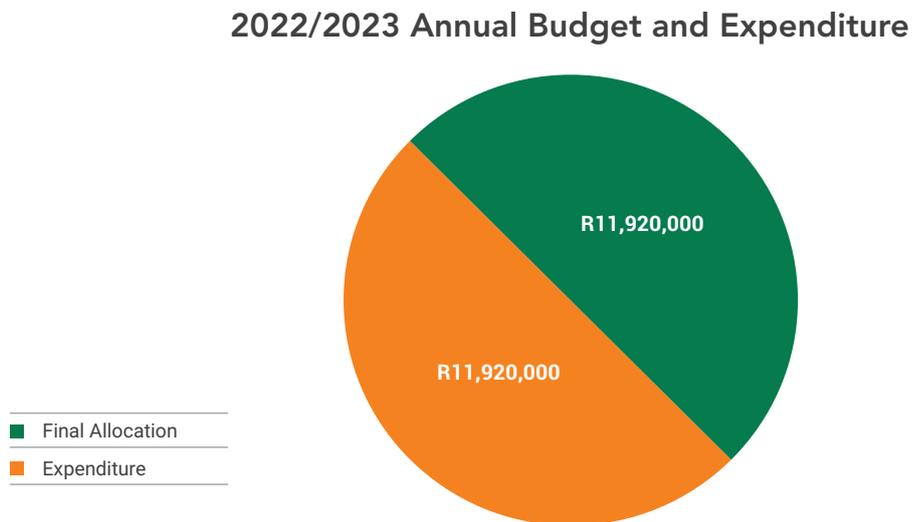
The 2022/2023 JSC Budget and Expenditure for the year under review is illustrated in the table below:

**Table 8: JSC Budget and Expenditure**

ECONOMIC CLASSIFICATION	Final Allocation (Rand)	Expenditure (Rand)	Variance
Compensation of Employees	2,410,000	2,410,000	-
Goods and Services	9,510,000	9,510,000	-
<b>TOTAL</b>	<b>11,920,000</b>	<b>11,920,000</b>	<b>-</b>

The 2022/2023 financial year JSC Budget and Expenditure report is illustrated in the figure below:

**Figure 6: JSC Budget and Expenditure report for the period under review**



## 7. CONCLUSION

The Commission has continued to discharge its constitutional and statutory mandate pertaining to the appointment of Judges by the President. Transformation of the Judiciary continues to be central to the Commission's role when considering candidates for judicial appointment. Focus on this constitutional imperative will continue until the Judiciary fully reflects the racial and gender composition of the people of the Republic of South Africa.





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